IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

MISC. CIVIL APPLICATION NO.20 OF 2007

Mrs Archana @ Varsha Dipak Dalani,)
Hindu, Indian Inhabitant, Adult,)
Aged about 21 years, Occ: Housewife,)
Presently residing at C/o.Mr.Rameshlal)
Chimandas Badlani, Godrej Hills)
Nos.6/7, Godrej Hill Road, Kalyan,)
District Thane.)...Applicant

Versus

Mr.Dipak s/o.Shankerlal Dalani,)
Hindu, Indian Inhabitant, Adult,)
Aged about 25 years, Occ:Goldsmith,)
Residing at Block No.P-3, Room No.4,)
Kumar Nagar, Sakra Road, Dhule,)
District Dhule.)...Respondent

Shri V.N.Tayade for the Applicant.

Shri D.S.Mhasipurkar for the Respondent.

CORAM : ABHAY S.OKA, J.

DATE ON WHICH SUBMISSIONS ARE HEARD. : JUNE 29, 2007.

DATE ON WHICH JUDGMENT IS PRONOUNCED. : AUGUST 23, 2007.

JUDGMENT:

1. This is an Application filed by the Applicant-wife under section 24 of the Code of Civil Procedure, 1908. The Respondent-husband filed a petition for divorce under the Hindu Marriage Act, 1955 in the Court of the Civil Judge, Senior Division

at Dhule. Prayer in this Application is for transferring the said Petition to the Court of Civil Judge, Senior Division at Kalyan, District Thane.

2. According to the case of the Applicant, her marriage with the Respondent was solemnised on 30th December, 2004 at Dhule. The Applicant delivered a male child on 21st October, 2005. According to the case of the Applicant as a result of the mental torture, harassment and humiliation by the Respondent, she had to inform her father to take her away from the matrimonial home. Accordingly, her father took the Applicant to his house on 25th November, 2005. On that day the Applicant was ill due to torture, harassment and humiliation caused to her by the Respondent and other members of the family of the Respondent.

3. The Respondent filed Hindu Marriage Petition No.08 of 2007 under section 9 of the Hindu Marriage Act, 1955 for restitution of the conjugal rights. According to the case of the Applicant, the said Petition was decided in favour of the Respondent in a short span of two and half months. Thereafter the present Petition which is subject matter of this Application has been filed by the Respondent.

4. The case of the Applicant is that she is in financial difficulty as she is completely dependent on her father. It is stated that she has to look after her minor son who is of a tender age. She has stated that she is not in a position to attend the Petition filed by the Respondent in the Court at Dhule. It is alleged that the Applicant is not maintaining good health.

5. There is a reply filed by the Respondent. It is contended that the grounds urged by the Applicant are frivolous.

6. The learned counsel for the Respondent raised a preliminary objection. His submission is that the Application ought to have been filed before the Bench of this Court at Aurangabad in view of rule 1 of Chapter XXXI of the Appellate Side Rules as this Application arises in the judicial district of Dhule.

7. In view of the reasons recorded in a separate judgment delivered today in Misc. Civil Application No.28 of 2007, this objection cannot be accepted. This Application arises in the judicial District of Thane as well as the judicial District of Dhule and

therefore, it is validly filed at Mumbai.

8. It is not in dispute that the Applicant is staying at Kalyan. The minor son who is born on 21st October, 2005 is in the custody of the Applicant. Considering the distance between Kalyan and Dhule, it will be very difficult for the Applicant to undertake travelling for attending the Court at Dhule. It is contended by the Applicant that she has no source of income and she has to depend on her father. Second contention is that the Applicant has to look after her son who is of a tender age. In view of the said averments, a case is made out for passing order of transfer.

9. Hence, I pass the following order:

(i) Hindu Marriage Petition No.08 of 2007 pending in the Court of the Civil Judge, Senior Division at Dhule is hereby transferred to the Court of the Civil Judge, Senior Division at Kalyan, District Thane.

(ii) The learned Civil Judge, Senior Division at Dhule will transfer the papers of the Petition to the Court at Kalyan within a period of two

weeks from the date of receipt of writ of this order.

(iii) The learned Civil Judge, Senior Division at Kalyan will issue notice to the parties of the date fixed for hearing.

(iv) There will be no orders as to costs.

(v) Writ to be sent immediately.

JUDGE